

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

JOHN H. BENGE, JR.,
PETITIONER

v.

RICK KEARNEY, WARDEN
SUSSEX CORRECTIONAL
INSTITUTION,
RESPONDENT

NO. 05-0550(GMS)

MOTION TO CONSOLIDATE *HABEAS CORPUS* PETITIONS

FILED

AUG 26 2005

U.S. DISTRICT COURT
DISTRICT OF DELAWARE

COMES NOW, John H. Benge, Jr., petitioner *pro se*, and moves this Court pursuant to Rule 42(a) of the Federal Rules Of Civil Procedure for an order consolidating the *habeas corpus* petitions filed by petitioner in Civil Action Nos. 05-0550 and 05-0551 in this Court. The grounds for this motion are as follows:

1. Petitioner has filed two *habeas corpus* petitions in this Court. The first of these petitions [Civil Action No. 05-0500(GMS)] challenges three October 10, 2002 convictions in Delaware Superior Court in Sussex County. That petition sets forth four due process grounds for *habeas corpus* relief and a fifth grounds based on a 6th Amendment *Blakely v. Washington*, 542 U.S. __ (2004) challenge to Delaware's system of imposing enhanced criminal sentences as that system applies to petitioner.

2. The second of petitioner's *habeas corpus* petitions [Civil Action No. 05-0501(GMS)] attacks a March 19, 2003 enhanced sentence in Delaware Superior Court in New Castle County. That petition challenges the sentence imposed by the Superior Court in New Castle County on the basis of *Blakely v. Washington, supra*, and on an additional ground of the First Amendment "right to petition."
3. As is apparent from the above, there is a common question of law presented in petitioner's two *habeas corpus* petitions, viz., whether the Delaware sentencing scheme in criminal cases is consistent with the 6th Amendment as applied in petitioner's cases.
4. By this motion, petitioner seeks an order of this Court consolidating the two *habeas corpus* petitions filed by petitioner in this Court pursuant to FRCP Rule 42(a) as a result of the common question of laws present.
5. Consolidation of civil actions with a common question of law is appropriate where such consolidation will promote judicial economy, *Franscesco v. White Tiger Transporastion Co., Inc.*, 679 F. Supp. 456 (M.D. Pa., 1988); where consolidation will eliminate duplication of effort, *May v. Liberty Mutual Insurance Co.*, 35 F.R.D. 234 (E.D. Pa., 1964); or where a savings of time will result from consolidation, *Waste Distillation Technology, Inc. v. Pan American Resources, Inc.*, 775 F. Supp. 759 (D. Del., 1991). These considerations of facilitating

disposition of an entire controversy are to be balanced against other considerations present in the case such as inconvenience to the parties.

Id.

6. In the instant cases, which were required to be filed as separate action, the benefits of judicial economy and the avoidance of duplication of effort(particularly as petitioner is a pro se litigant) will distinctly facilitate disposition of these cases. Petitioner submits that the foregoing considerations outweigh any other factors in this case that might inveigh against consolidation.
7. Consolidation is therefore appropriate and desirable to aid in the resolution of the two *habeas corpus* petitions.
8. Petitioner therefore moves that future filings in the consolidated cases be made under the following caption:

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**RICK KEARNEY, WARDEN
SUSSEX CORRECTIONAL
INSTITUTION,
RESPONDENT**

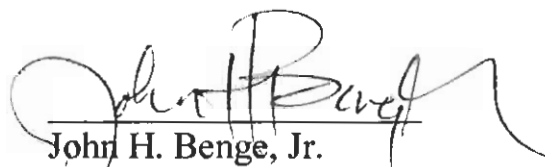
Consolidated Petitions

NO. 05-0500(GMS)
NO. 05-0501(GMS)

9. Petitioner waives the filing of any further brief or memorandum in support of this motion.

WHEREFORE. Petitioner moves for an order of this Court consolidating the two *habeas corpus* petitioners filed by petitioner in this Court under the consolidated caption set forth above.

Date: August 23, 2005


John H. Bengé, Jr.
Sussex Correctional Inst.
P.O. Box 500
Georgetown, DE 19947

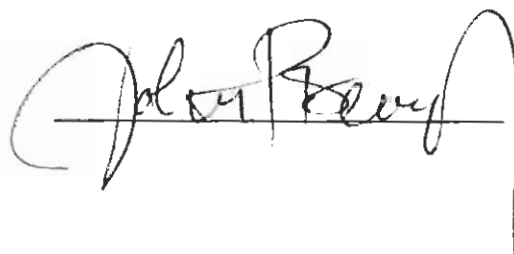
CERTIFICATE OF SERVICE

The undersigned hereby certifies that two copies of the attached Motion To Consolidate were served on August 23rd, 2005 by depositing the same in the prisoner mail dropbox at Sussex Correctional Institution, Georgetown, Delaware, first class mail, postage prepaid, and addressed to:

Gregory E. Smith, Esq.
Deputy Attorney General
Department of Justice
820 North French Street
Wilmington, DE 19801

I hereby certify under penalty of the laws of the United States of America that the foregoing is true and correct.

Executed on August 23rd, 2005

A handwritten signature in black ink, appearing to read "John R. Brey", is written over a horizontal line. The signature is stylized with a large initial "J" and a long, sweeping underline.

I/M: J. Benge BLDG. Mer W
SUSSEX CORRECTIONAL INSTITUTION
P.O. BOX 500
GEORGETOWN, DELAWARE 19947

U.S.M.S.
X-RAY

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